

## **Assembly Bill No. 1123**

### **CHAPTER 251**

An act to amend Section 25205.6 of the Health and Safety Code, to amend Sections 42886 and 42886.1 of the Public Resources Code, to amend Sections 6593.5, 7285, 7285.5, 7288.3, 7655, 7657, 7658, 7658.1, 7659.2, 8878, 8878.5, 11409, 30014, 30016, 30104, 30108, 30176.1, 30181, 30283.5, 32255, 32256.5, 38455, 40103.5, 41097.5, 43152.9, 43158.5, 45156.5, 46157.5, 50112.4, 55046, and 60212 of, to add Article 2.5 (commencing with Section 7659.9) to Chapter 5 of Part 2 of Division 2 of, and to repeal Section 30463 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 5, 2001. Filed  
with Secretary of State September 5, 2001.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1123, Committee on Revenue and Taxation. Taxation: sales and use taxes: transactions taxes: special taxes and fees.

The State Board of Equalization collects and administers a variety of tax and fee programs with respect to matters including, but not limited to, vehicle fuels, timber, cigarettes and tobacco products, alcoholic beverages, emergency telephone services, integrated waste management, oil spills, hazardous materials, underground storage systems, and private railroad cars.

This bill would make technical, nonsubstantive changes to the provisions under which the board administers these tax programs.

Existing law requires certain taxes administered by the State Board of Equalization to be paid by electronic transmission when the tax liability meets a specified threshold, and allows payment by electronic transmission if the tax liability is below that threshold.

This bill extends the electronic transmission requirements to payments of the motor vehicle fuel tax.

This bill would incorporate additional changes to Section 25205.6 of the Health and Safety Code, proposed by AB 664, to be operative only if AB 664 and this bill are both chaptered and become effective on or before January 1, 2002, and this bill is chaptered last.

This bill would incorporate additional changes to Section 7657 of the Revenue and Taxation Code, proposed by AB 309, to be operative only if AB 309 and this bill are both chaptered and become operative on or before January 1, 2002, and this bill is chaptered last.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25205.6 of the Health and Safety Code is amended to read:

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of corporations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(b) Each corporation of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at two hundred dollars (\$200) for those corporations with 50 or more employees, but less than 75 employees, three hundred fifty dollars (\$350) for those corporations with 75 or more employees, but less than 100 employees, seven hundred dollars (\$700) for those corporations with 100 or more employees, but less than 250 employees, one thousand five hundred dollars (\$1,500) for those corporations with 250 or more employees, but less than 500 employees, two thousand eight hundred dollars (\$2,800) for those corporations with 500 or more employees, but less than 1,000 employees, and nine thousand five hundred dollars (\$9,500) for those corporations with 1,000 or more employees.

(c) The fee imposed pursuant to this section shall be paid by each corporation that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.

(e) The fee rates specified in subdivision (b) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the State Board of Equalization shall adjust the rates annually to reflect increases or decreases in the cost of living during

the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(f) Pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)), the state is obligated to pay specified costs of removal and remedial actions carried out pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The fee rates specified in subdivision (b) are intended to provide sufficient revenues to fund the purposes of subdivision (b) of Section 25173.6, including appropriations in any given fiscal year of three million three hundred thousand dollars (\$3,300,000) to fund the state's obligation pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)). If the department determines that the state's obligation under paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)) will exceed three million three hundred thousand dollars (\$3,300,000) in any fiscal year, the department shall report that determination to the Legislature in the Governor's Budget. If, as part of the Budget Act deliberations, the Legislature concurs with the department's determination, the Legislature shall specify in the annual Budget Act those pro rata changes to the fee rates specified in subdivision (b) that will increase revenues in the next calendar year as necessary to fund the state's increased obligations. However, the Legislature shall not specify fee rates in the annual Budget Act that increase revenues in an amount greater than eight million two hundred thousand dollars (\$8,200,000) above the revenues provided by the fee rates specified in subdivision (b). Any changes in the fee rates approved by the Legislature in the annual Budget Act pursuant to this subdivision shall have effect only on the fee payment that is due and payable by the end of February in the fiscal year for which that annual Budget Act is enacted.

(g) This section does not apply to a nonprofit corporation primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

SEC. 1.5. Section 25205.6 of the Health and Safety Code is amended to read:



25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of corporations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(b) Each corporation of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at two hundred dollars (\$200) for those corporations with 50 or more employees, but less than 75 employees, three hundred fifty dollars (\$350) for those corporations with 75 or more employees, but less than 100 employees, seven hundred dollars (\$700) for those corporations with 100 or more employees, but less than 250 employees, one thousand five hundred dollars (\$1,500) for those corporations with 250 or more employees, but less than 500 employees, two thousand eight hundred dollars (\$2,800) for those corporations with 500 or more employees, but less than 1,000 employees, and nine thousand five hundred dollars (\$9,500) for those corporations with 1,000 or more employees.

(c) The fee imposed pursuant to this section shall be paid by each corporation that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.

(e) The fee rates specified in subdivision (b) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the State Board of Equalization shall adjust the rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(f) Pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)), the state

is obligated to pay specified costs of removal and remedial actions carried out pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The fee rates specified in subdivision (b) are intended to provide sufficient revenues to fund the purposes of subdivision (b) of Section 25173.6, including appropriations in any given fiscal year of three million three hundred thousand dollars (\$3,300,000) to fund the state's obligation pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)). If the department determines that the state's obligation under paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9604(c)(3)) will exceed three million three hundred thousand dollars (\$3,300,000) in any fiscal year, the department shall report that determination to the Legislature in the Governor's Budget. If, as part of the Budget Act deliberations, the Legislature concurs with the department's determination, the Legislature shall specify in the annual Budget Act those pro rata changes to the fee rates specified in subdivision (b) that will increase revenues in the next calendar year as necessary to fund the state's increased obligations. However, the Legislature shall not specify fee rates in the annual Budget Act that increase revenues in an amount greater than eight million two hundred thousand dollars (\$8,200,000) above the revenues provided by the fee rates specified in subdivision (b). Any changes in the fee rates approved by the Legislature in the annual Budget Act pursuant to this subdivision shall have effect only on the fee payment that is due and payable by the end of February in the fiscal year for which that annual Budget Act is enacted.

(g) This section does not apply to a nonprofit corporation primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(h) This section does not apply to a nonprofit corporation primarily engaged as a religious organization operated for worship, religious training or study, the government or administration of an organized religion, or for the promotion of religious activities, as described in SIC Code 8661 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition. However, any other establishment maintained by a religious



organization at the same or other location is subject to this section, including, but not limited to, an educational institution, hospital, publishing house, reading room, social service, or secondhand store.

SEC. 2. Section 42886 of the Public Resources Code is amended to read:

42886. The fees remitted pursuant to Section 42885 are due and payable quarterly on or before the 15th day of the month following each calendar quarter.

SEC. 3. Section 42886.1 of the Public Resources Code is amended to read:

42886.1. (a) The State Board of Equalization if it deems it necessary in order to ensure payment to or facilitate the collection by the state of the amount of fees, may require returns and payment of the amount of fees for a yearly period.

(b) On or before the 15th day of the month following each designated yearly period, a return for the preceding designated yearly period shall be filed with the State Board of Equalization in the form as the State Board of Equalization may prescribe.

SEC. 4. Section 6593.5 of the Revenue and Taxation Code is amended to read:

6593.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part under the following circumstances:

(1) Where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(2) Where failure to pay use tax on a vehicle or vessel registered with the Department of Motor Vehicles was the direct result of an error by the Department of Motor Vehicles in calculating the use tax.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after July 1, 1999.

SEC. 5. Section 7285 of the Revenue and Taxation Code is amended to read:

7285. The board of supervisors of any county may levy a transactions and use tax for general purposes at a rate of 0.25 percent or



a multiple thereof, if the ordinance proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and the tax is approved by a majority vote of the qualified voters of the county voting in an election on the issue. The board of supervisors may levy more than one transaction and use tax under this section, if the adoption of each tax is in the manner prescribed in this section. The transactions and use tax shall conform to Part 1.6 (commencing with Section 7251).

SEC. 6. Section 7285.5 of the Revenue and Taxation Code is amended to read:

7285.5. As an alternative to the procedure set forth in Section 7285, the board of supervisors of any county may levy a transactions and use tax for specific purposes. The tax may be levied at a rate of 0.25 percent, or a multiple thereof, for the purpose for which it is established, if all of the following requirements are met:

(a) The ordinance proposing that tax is approved by a two-thirds vote of all members of the board of supervisors and is subsequently approved by a two-thirds vote of the qualified voters of the county voting in an election on the issue.

(b) The transactions and use tax conforms to the Transactions and Use Tax Law Part 1.6 (commencing with Section 7251).

(c) The ordinance includes an expenditure plan describing the specific projects for which the revenues from the tax may be expended.

SEC. 7. Section 7288.3 of the Revenue and Taxation Code is amended to read:

7288.3. A local public finance authority may adopt an ordinance imposing, for the authority's general purpose, a transactions and use tax that conforms with Part 1.6 (commencing with Section 7251) at a rate of 0.25 percent, or a multiple thereof, if all of the following requirements are met:

(a) The ordinance specifies how the proceeds of the tax will be allocated among drug abuse prevention, crime prevention, health care services, and public education purposes. Funds allocated for public education purposes shall be governed by Chapter 8 (commencing with Section 42400) of Part 24 of Division 3 of Title 2 of the Education Code.

(b) The ordinance proposing the tax is approved by a two-thirds vote of the board of directors of the authority, provided that the two-thirds majority includes at least three of the members described in subdivision (a) of Section 7288.2, and at least three of the members described in subdivision (b) of Section 7288.2.

(c) The ordinance proposing the tax is approved by two-thirds of the qualified voters of the county voting on the measure.

SEC. 8. Section 7655 of the Revenue and Taxation Code is amended to read:





7655. (a) Any person who fails to pay the amount of tax shown to be due by his or her return on or before the last day of the month following the monthly period to which it relates shall pay a penalty of 10 percent of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(b) Any supplier who fails to file a return in accordance with the due date set forth in Section 7651 shall pay a penalty of 10 percent of the amount of the tax, exclusive of prepayments, with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required, exclusive of any prepayments, for any one return.

SEC. 9. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7654, 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 9.5. Section 7657 of the Revenue and Taxation Code is amended to read:

7657. (a) If the board finds that a person's failure to make a timely report, return, or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 7655, 7659.5, 7659.6, 7659.9, 7660, 7705, and 7713.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.





SEC. 10. Section 7658 of the Revenue and Taxation Code is amended to read:

7658. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 7655, 7656, 7659.9, 7661, and 7706. Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 11. Section 7658.1 of the Revenue and Taxation Code is amended to read:

7658.1. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 12. Section 7659.2 of the Revenue and Taxation Code is amended to read:

7659.2. Except in the case of a person required to remit amounts due in accordance with Article 2.5 (commencing with Section 7659.9), for purposes of Section 7659.1, each prepayment shall be accompanied by a report of the amount of that prepayment in a form prescribed by the board and shall be filed with the board on or before the 15th day following each monthly period together with a remittance payable to the Controller of the amount due.

SEC. 13. Article 2.5 (commencing with Section 7659.9) is added to Chapter 5 of Part 2 of Division 2 of the Revenue and Taxation Code, to read:

#### Article 2.5. Payment by Electronic Funds Transfer

7659.9. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed



by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform an electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 7651) and Article 1.1 (commencing with Section 7659). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment incorrectly remitted.

(f) Except as provided by Sections 7659.5 and 7659.6, any person who fails to pay any tax to the state or any amount of tax required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 7660) or Article 2.5 (commencing with Section 7670), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may



consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 7655.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 7659.5 and 7659.6 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

7659.91. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 7659.9. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

7659.92. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.



(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person, through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 7659.9 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

SEC. 14. Section 8878 of the Revenue and Taxation Code is amended to read:

8878. If the board finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 8754, 8760, 8803, and 8876.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 15. Section 8878.5 of the Revenue and Taxation Code is amended to read:

8878.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 16. Section 11409 of the Revenue and Taxation Code is amended to read:



11409. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if the person filed a timely report and no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 17. Section 30014 of the Revenue and Taxation Code is amended to read:

30014. (a) “Transporter” means any person transporting into or within this state any of the following:

(1) Cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions.

(2) Tobacco products upon which the tobacco products surtax imposed by Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 has not been paid.

(b) “Transporter” shall not include any of the following:

(1) A licensed distributor.

(2) A common carrier.

(3) A person transporting cigarettes and tobacco products under federal internal revenue bond or customs control that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.

SEC. 18. Section 30016 of the Revenue and Taxation Code is amended to read:

30016. “Wholesaler” includes:

(a) Any person, other than a licensed distributor, who engages in this state in making sales for resale of cigarettes that are contained in packages to which are affixed stamps or meter impressions.

(b) Any person, other than a licensed distributor, who engages in this state in making sales for resale of tobacco products on which the tax imposed in Sections 30123 and 30131.2 has been paid.

SEC. 19. Section 30104 of the Revenue and Taxation Code is amended to read:

30104. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier



engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of the carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Sections 30101, 30123, and 30131.2 shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making sales in California at the same rate as set forth in Sections 30101, 30123, and 30131.2. Those common carriers and authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.

SEC. 20. Section 30108 of the Revenue and Taxation Code is amended to read:

30108. (a) Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Sections 30101, 30123, and 30131.2 is inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) Every person engaged in business in this state and making gifts of untaxed cigarettes or tobacco products as samples with respect to which the tax imposed by Sections 30101, 30123, and 30131.2 is inapplicable shall, at the time of making the gift or, if the donee is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the donee becomes so obligated, collect the tax from the donee, if the donee is other than a licensed distributor, and shall give the donee a receipt therefor in the manner and form prescribed by the board. This section shall not apply to those distributions of cigarettes or tobacco products which are exempt from tax under Section 30105.5.

(c) “Engaged in business in the state” means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.



(2) Having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes or tobacco products.

(d) The taxes required to be collected by this section constitute debts owed by the distributor, or other person required to collect the taxes, to the state.

SEC. 21. Section 30176.1 of the Revenue and Taxation Code is amended to read:

30176.1. (a) The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 which is paid on the distribution of tobacco products which are shipped to a point outside the state for subsequent use or sale out of the state.

(b) This section does not apply to tobacco products delivered to the consumer in this state and subsequently taken outside the state.

SEC. 22. Section 30181 of the Revenue and Taxation Code is amended to read:

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form prescribed by the board for each calendar month. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period. To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods.

SEC. 23. Section 30283.5 of the Revenue and Taxation Code is amended to read:

30283.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay





tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 24. Section 30463 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 32255 of the Revenue and Taxation Code is amended to read:

32255. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 32252, 32260, 32291, and 32305.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

SEC. 26. Section 32256.5 of the Revenue and Taxation Code is amended to read:

32256.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.



(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 27. Section 38455 of the Revenue and Taxation Code is amended to read:

38455. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if the person filed a timely report and no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 28. Section 40103.5 of the Revenue and Taxation Code is amended to read:

40103.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay the surcharge is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the person liable for the surcharge.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on surcharge liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 29. Section 41097.5 of the Revenue and Taxation Code is amended to read:

41097.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.



(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 30. Section 43152.9 of the Revenue and Taxation Code is amended to read:

43152.9. (a) The fee imposed pursuant to Section 25205.6 of the Health and Safety Code, which is collected and administered under Section 43054, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every corporation subject to the fee imposed pursuant to Section 25205.6 of the Health and Safety Code shall, on forms prescribed by the board, file an annual return and pay the proper amount of fee due.

SEC. 31. Section 43158.5 of the Revenue and Taxation Code is amended to read:

43158.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 32. Section 45156.5 of the Revenue and Taxation Code is amended to read:

45156.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.



(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 33. Section 46157.5 of the Revenue and Taxation Code is amended to read:

46157.5. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during fee periods commencing on or after January 1, 2000.

SEC. 34. Section 50112.4 of the Revenue and Taxation Code is amended to read:

50112.4. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.



SEC. 35. Section 55046 of the Revenue and Taxation Code is amended to read:

55046. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 36. Section 60212 of the Revenue and Taxation Code is amended to read:

60212. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

SEC. 37. Section 1.5 of this bill incorporates amendments to Section 25205.6 of the Health and Safety Code proposed by both this bill and AB 664. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 25205.6 of the Health and Safety Code, and (3) this bill is enacted after AB 664, in which case Section 1 of this bill shall not become operative.

SEC. 38. Section 9.5 of this bill incorporates amendments to Section 7657 of the Revenue and Taxation Code proposed by both this bill and AB 309. Section 9.5 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each



bill amends Section 7657 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 309, in which case Section 7657 of the Revenue and Taxation Code, as amended by AB 309, shall remain operative only until the operative date of this bill, at which time Section 9.5 of this bill shall become operative, and Section 9 of this bill shall not become operative.

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